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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FTI - 176383

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on August 26, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Brown County Human Services regarding FoodShare benefits (FS), a hearing was held on September 19, 2016, by telephone.

The issue for determination is whether the Department of Health Services correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED], Fraud Investigator Aide  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. On January 27, 2016, the county agency mailed two FoodShare Overpayment Notices to the petitioner which informed her that the agency had determined that she was not eligible for \$2,077 of FoodShare benefits issued to her for the period of April 1, 2014 through March 31, 2015. The notices further indicated that the benefits had been incorrectly paid as a result of an agency error but that the petitioner was nevertheless responsible to repay the agency. The notices informed her that she had 90 days to file an appeal if she believed the action was wrong. The petitioner received both notices.
3. On February 2, 2016, the county agency mailed the petitioner a FoodShare Repayment Agreement. The county agency did not subsequently receive a completed repayment agreement from the petitioner.
4. On March 2, 2016, April 4, 2016, and May 3, 2016, the county agency sent dunning notices to the petitioner regarding the outstanding overpayment.
5. On June 17, 2016, the county agency mailed the petitioner a notice informing her that her state tax refund and/or any tax credits may be intercepted to recover “unpaid debt for excess public assistance” in the amount of \$2,077. That notice informed her that she had 30 days from the date of the notice to request an administrative hearing. The petitioner received the notice.
6. On August 26, 2016, the petitioner filed an appeal regarding “overissued FoodShare claims” with the Division of Hearings and Appeals.

### **DISCUSSION**

The Department of Health Services (“the department”) is required to certify to the Department of Revenue the amounts it has determined it may recover because of an overissuance of FoodShare benefits. Wis. Stat. § 49.85. In turn, the department must notify the recipient that it intends to certify the overpayment to the Department of Revenue for a setoff from her state income tax refund and must inform her of her right to appeal that decision. Wis. Stat. § 49.85(3).

The petitioner’s right to a hearing is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

FoodShare recipients seeking to appeal a negative decision (e.g., a finding of overpayment) must do so within 90 days from the date of the decision. Wis. Admin. Code § HA 3.05(3)(a). And, individuals seeking to appeal the interception of their tax refunds must do so within 30 days of the date of the notice that informs them of the intended interception. Wis. Stat. § 49.85(3)(b)2; Wis. Admin. Code § HA 3.05(3)(b).

The county agency notified the petitioner on January 27, 2016 that she was overpaid \$2,077 in FoodShare benefits for the period of April 1, 2014 through March 31, 2015 because it failed to correctly budget unearned income. And, in a notice dated June 17, 2016, the department informed her that the department may intercept any state income tax refund or credit to recover the \$2,077 of overpaid “public assistance.” The overpayment notices properly notified the petitioner of her right to file an appeal within 90 days (i.e., by April 26, 2016) and the notice of state tax intercept properly notified the petitioner of her right to file an appeal within 30 days (i.e., by July 17, 2016). The petitioner first filed an appeal on August 26, 2016 which was four months after her right to appeal the overpayment notices expired and more than one

month after her right to appeal the notice of state tax intercept. The petitioner acknowledged that the notices were mailed to her at the address where she has resided for sixteen years and that she received both the original overpayment notices dated January 27, 2016 and the notice regarding the state's intent to intercept her tax refunds and/or credits. When asked during the hearing why she eventually filed an appeal on August 26, 2016 rather than earlier, the petitioner responded, "I don't know, because I'm fighting this, this is B.S."

The petitioner's own testimony as well as the evidence presented by the county agency established that she had an opportunity to appeal the overpayment of which she was notified in January of 2016 but did not exercise it. Because the petitioner had a prior opportunity for a hearing on the overpayment, that issue is excluded from this hearing, pursuant to Wis. Stat. §49.85(4)(b). Moreover, the petitioner's appeal of the state's intent to intercept her tax refunds and/or credits is untimely. There is thus no jurisdiction to hear the merits of her appeal.

It is also relevant to note that the petitioner credibly testified that she had been forthcoming with the agency regarding the source of her income. Specifically, she explained that she had let the agency know that her parents were financially supporting her. The agency representative did not dispute that. And, the original overpayment notice itself characterized the overpayment as one that occurred due to "non-client error." Relevant federal law however explicitly permits recovery of FoodShare overpayments even when the "client" or recipient is not at fault for causing that overpayment.

### **CONCLUSIONS OF LAW**

The department correctly seeks to intercept the petitioner's state income tax refund to recover an overpayment of FoodShare benefits because her appeal of the underlying overpayment and of the tax refund intercept is untimely.

**THEREFORE, it is**

**ORDERED**

Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 22nd day of September, 2016

\s \_\_\_\_\_  
Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 22, 2016.

Brown County Human Services  
Public Assistance Collection Unit